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In re Application of  
Pieroni et al.  
Application No. 09/348,320  
Filed: July 7, 1999  
Attorney Docket No. CHMP-102

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile on March 22, 2002, to revive the above-identified application.<sup>1</sup>

The petition is **GRANTED**.

A final Office Action was mailed on August 14, 2001, setting forth a 3-month shortened statutory reply period. A proposed amendment, timely filed on February 4, 2002<sup>2</sup> ("2/4/02 proposed amendment"), did not place the application in condition for allowance and was not entered.<sup>3</sup> The application thus became abandoned on November 15, 2001.<sup>4</sup> The petition precedes the mailing of a notice of abandonment.

The instant petition encloses an RCE and the requisite "submission" as reply to the August 14, 2001 final Office Action;<sup>5</sup> an authorization to charge the \$370 RCE filing fee (small entity) and

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<sup>1</sup> The instant petition had been filed concurrently with a petition under 37 CFR 1.137(a), which was withdrawn on 4/29/02 in accordance with counsel's instruction via facsimile.

<sup>2</sup> Certificate of Mailing date 10/25/01.

<sup>3</sup> As pointed out in the 2/15/02 Advisory Action letter, the period for reply to the 8/14/01 final Office Action expires 3 months from the mailing date of that letter, i.e., 11/14/01, unless an extension of time under 37 CFR 1.136(a) is obtained.

<sup>4</sup> Abandonment may result where applicant's reply is timely but is not fully responsive to the Office action; see MPEP section 711.02(a) (Aug. 2001); also 37 CFR 1.135 & MPEP 711.04(a) (Aug. 2001): "[T]he date of abandonment is after midnight of the date on which the set shortened statutory period, including any [obtained] extensions under 37 CFR 1.136, expired."

<sup>5</sup> The "required reply" under 37 CFR 1.137(b)(1) for reviving an application abandoned due to failure to timely and properly respond to a final Office action, as is in the instant case, must be the filing of: (1) a continuing application under 37 CFR 1.53(b); (2) a request for continued examination (RCE) by filing a submission under 37 CFR 1.114 (for utility or plant applications filed on or after 6/8/95); (3) a notice

the \$640 petition fee (small entity) to Deposit Account No. 08-1310; and a statement that the entire delay in filing the required reply from its due date until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The petition is thus granted.

The Office also acknowledges receipt on February 19, 2002 of an assignment document for recordation.<sup>6</sup>

The application is being forwarded to Technology Center 2800 for review of the "submission" accompanying the RCE filed with the petition.<sup>7</sup>

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-0763.



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for Patent Examination Policy

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of appeal; or, (4) a proper amendment, i.e., an amendment that *prima facie* places the application in condition for allowance. Since no claims stand allowed under the 8/14/01 final Office Action, an amendment canceling all rejected claims would not be a proper form of reply for the instant application. See MPEP 711.03(c)(III)(A)(2)(b) (Aug. 2001).

Applicants are utilizing the 2/4/02 proposed amendment as the "submission" required under 37 CFR 1.114; see MPEP section 706.07(h)(II) (Aug. 2001) (A previously filed amendment after final, whether or not entered, may satisfy this "submission" requirement).

<sup>6</sup> Only 1 assignment was recorded in the PTO on that date, which requires a \$40 fee. A \$80 payment is shown. The overpayment of \$40 has been credited to Deposit Account No. 08-1310 as also authorized in the instant petition.

<sup>7</sup> See supra note 5, last paragraph.